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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

AMICA MUTUAL INSURANCE
COMPANY, a/s/o Sarkis Tabakian and
Kohar Tabakian,

Plaintiff,

vs.

BRASSCRAFT MANUFACTURING
COMPANY and Does I through X, inclusive,

Defendant.

BRASSCRAFT MANUFACTURING
COMPANY,

Third-Party Plaintiff,

vs.

ACCUFLEX INDUSTRIAL HOSE LTD,

Third-Party Defendant.

Case No.: 2:18-cv-01386-JCM-CWH

**STIPULATED CONFIDENTIALITY
AND PROTECTIVE ORDER**

This Stipulated Confidentiality and Protective Order ("Protective Order") is stipulated and entered into by and between Defendant Brasscraft Manufacturing Company ("BrassCraft")

1 and Plaintiff Amica Mutual Insurance Company (“Amica”), by and among the undersigned
2 counsel, acting for, on behalf of, and with the express authorizations and approval of BrassCraft
3 and Amica (each a “party” and, collectively, the “parties”). The parties, subject to the approval
4 of this Court, stipulate and agree that the following Protective Order shall govern the handling of
5 documents and materials, including but not limited to deposition testimony, deposition exhibits,
6 interrogatory responses, admissions, documents produced, tangible things, and any other
7 information produced, given, or exchanged by and among the parties and any non-parties to the
8 above-captioned litigation through formal or informal discovery.

9 WHEREAS, on July 2, 2018, Amica filed a Complaint against BrassCraft contending
10 that it is entitled to recover damages from BrassCraft due to an alleged defective BrassCraft
11 product installed in its insured’s residence that allegedly caused water damage to the residence
12 and personal property therein. BrassCraft thereafter filed a Third-Party Complaint against
13 Accuflex Industrial Hose, Ltd. (“Accuflex”) contending that the product’s alleged failure, if any,
14 was due to a defective part within the product manufactured and supplied to BrassCraft by
15 Accuflex.

16 WHEREAS, disclosure and discovery activity in this action are likely to involve
17 production of confidential, proprietary, or private business information, including without
18 limitation product design and manufacturing schematics, for which special protection from
19 public disclosure and from use for any purpose other than prosecuting this litigation may be
20 warranted.

21 WHEREAS, the parties have an interest in preserving and maintaining the
22 confidentiality of any confidential, proprietary, and/or private business information from public
23 view or dissemination.

24 NOW, THEREFORE, the undersigned counsel, BrassCraft, and Amica hereby stipulate
25 and petition this Court as follows:

26 A. Definitions

27 1. “Document,” whether used in the singular or plural, means any document or
28 electronically-stored information as set forth in the Federal Rules of Civil Procedure.

2. “Designating Party” means a party or third-person that produces information in discovery that is deemed “Confidential” pursuant to this Order.

3. “Confidential Information” means any information that is designated as such by a Designating Party. Information may be designated “Confidential” only if the Designating Party has a good-faith basis for believing the information: (a) is confidential under federal or state law or regulations; or (b) contains sensitive personal, financial, or professional information that is generally unavailable to the public and that, if made available to the public, may be injurious to that party’s personal, financial, or professional interests.

4. “Filing Party” shall mean any party who seeks to file with the Court documents or other papers reflecting information designated as “Confidential Information.”

5. “Receiving Party” shall mean any party who receives documents or other papers or items reflecting information designated as “Confidential Information.”

6. “Privilege” shall mean the attorney-client privilege, the attorney work-product doctrine, or any other legally-recognized privilege, doctrine, or protection that may apply to documents or information in this case.

B. Use of Confidential Information

1. Any and all Confidential Information produced or exchanged in the course of this litigation shall be treated as confidential and shall be used solely for the prosecution and defense of this litigation and for no other purpose. No Confidential Information shall be revealed, disclosed, or made available for inspection and copying to any person who is not permitted to see it pursuant to the terms of this Order without express written consent of the Designating Party. Before receiving access to any of the Confidential Information, each person described in Paragraphs 2(f) through 2(j) shall execute an agreement to be fully bound by this Protective Order in the form of Exhibit A, attached hereto.

2. Except as specifically provided for in this Protective Order or subsequent orders of this Court, discovery materials designated “Confidential” or their contents shall not be revealed, disclosed, or otherwise made known to any persons, other than the following listed below. The parties and their counsel agree that the Confidential Information provided under this agreement

1 and Protective Order shall only be used to investigate, analyze, defend, and resolve the claims
2 asserted in the above-captioned lawsuit.

- 3 a) Counsel of record in this action;
- 4 b) Employees of counsel of record in this action;
- 5 c) This Court;
- 6 d) Court reporters employed in connection with this litigation;
- 7 e) Special masters, settlement judges and/or mediators;
- 8 f) Outside vendors who are necessary to assist counsel of record in this
9 action in the preparation and trial of this action;
- 10 g) Experts retained by counsel of record in this action;
- 11 h) Deposition witnesses;
- 12 i) Any person or entity to the extent required by operation of law, lawful
13 subpoena, or court order; and
- 14 j) Any other person with the consent, in writing, of all parties.

15 3. Every person given access to Confidential Information shall be advised that the
16 information is being disclosed pursuant to and subject to the terms of this Protective Order, and
17 may not be disclosed other than pursuant to the terms thereof.

18 4. If any party intends to file with the Court or offer into evidence any document
19 claimed to reflect Confidential Information, the Filing Party shall file a motion to seal in
20 compliance with the Ninth Circuit's directives in *Kamakana v. City and County of Honolulu*,
21 447 F.3d 1172 (9th Cir. 2006) and the Court's electronic filing procedures provided for in Rule
22 IA 10-5 of the Local Rules of Practice of the United States District Court, District of Nevada,
23 which provides that,

- 24 (a) Unless otherwise permitted by statute, rule or prior court
25 order, papers filed with the court under seal shall be
26 accompanied by a motion for leave to file those documents
27 under seal. If papers are filed under seal under prior court
28 order, the papers must state on the first page, directly under
the case number: "FILED UNDER SEAL UNDER
COURT ORDER (ECF No.____)." All papers filed under
seal will remain sealed until the court either denies the

1 motion to seal or enters an order unsealing them.

2 (b) The court may direct the unsealing of papers filed under
3 seal, with or without redactions, after notice to all parties
4 and an opportunity to be heard.

5 (c) An attorney or pro se party who files a document under seal
6 must include with the document either (i) a certificate of
7 service certifying that the sealed document was served on
8 the opposing attorneys or pro se parties, or (ii) an affidavit
9 showing good cause why the document has not been served
10 on the opposing attorneys or pro se parties.

11 (d) Documents filed under seal in a civil case must be served in
12 accordance with LR IC 4-1(c).

13 *Id.* The Ninth Circuit held that there is a presumption of public access to judicial files and
14 records, and that parties seeking to maintain the confidentiality of documents attached to non-
15 dispositive motion must demonstrate good cause to overcome the presumption of public access.
16 *Kamakana*, 447 F.3d at 1179. Parties seeking to maintain the secrecy of documents attached to
17 dispositive motions, however, must demonstrate compelling reasons sufficient to overcome the
18 presumption of public access. *Id.* at 1180. Where the sole ground for a motion to seal is that the
19 document was designated confidential by the Designating Party and therefore subject to
20 protection pursuant to the stipulated protective order, the Filing Party must notify the
21 Designating Party at least seven day prior to filing the designated document with the court. The
22 Designating Party must then make a good faith determination if the relevant standard for sealing
23 is met. To the extent the Designating Party does not believe the relevant standard for sealing
24 can be met, it shall indicate that the document may be filed publicly no later than four days after
25 receiving notice of the intended filing. To the extent the Designating Party believes that
26 relevant standard for sealing can be met, it shall provide a declaration supporting that assertion
27 no later than four days after receiving notice of the intended filing. The Filing Party shall then
28 attach that declaration to its motion to seal the designated material. If the Designating Party

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1 fails to provide such a declaration in support of the motion to seal, the Filing Party shall file a
2 motion to seal so indicating and the Court may order the document filed in the public record.¹

3 5. Nothing in this Protective Order prevents use or disclosure of Confidential
4 Information beyond its terms if the Designating Party consents to such use or disclosure, or if
5 the Court, after notice to all affected parties, orders such use or disclosure.

6 6. This Protective Order does not in any way restrict a Designating Party's ability to
7 use his or her own Confidential Information for any purpose.

8 7. Any non-party producing documents in this litigation may avail itself of the
9 confidential treatment provided for in this Protective Order for its documents, information, or
10 testimony by following the procedures provided herein. Any non-party that wishes to produce
11 documents subject to this provision agrees to be bound by the terms and conditions of this
12 Protective Order and agrees that any disputes or issues relating to the application, interpretation,
13 or use of the Protective Order will be resolved in the United States District Court for the District
14 of Nevada.

15 C. Designating Confidential Material

16 1. This Order covers information or items that the disclosing party or non-party
17 (hereinafter, "source") designates "CONFIDENTIAL." The designation "CONFIDENTIAL"
18 shall be limited to information and items that the source in good faith believes is privileged,
19 proprietary, commercially sensitive, invades an employee or third-party's rights to privacy, may
20 be injurious to that party's personal, financial, or professional interests, or for similar reasons
21 should otherwise be subject to "CONFIDENTIAL" treatment. If only a portion of the materials,
22 documents, items, or oral or written communications qualify for protection, the Designating
23 Party must designate for protection only those parts of materials, documents, items, or oral or
24 written communications that qualify. Each party or non-party that designates information or
25

26 ¹ In the event of an emergency motion, the above procedures shall not apply. Instead, the
27 movant shall file a motion to seal and the Designating Party shall file a declaration in support of
28 that motion to seal within three days of its filing. If the designating party fails to timely file such
a declaration, the Court may order the document filed in the public record.

1 items as confidential under this Protective Order must take care to limit any such designation to
2 specific material that qualifies under the appropriate standards. Mass, indiscriminate, or
3 routinized designations are prohibited.

4 2. Information and items that are in the public domain, including but not limited to
5 documents presented at trial or other court proceedings publically and not under seal, may not
6 be designated as “CONFIDENTIAL.” This provision shall not apply to any document that is in
7 the public domain as a result of violation of any stipulation or court order with respect to such
8 document or any information included in such document.

9 3. Designation in conformity with this Protective Order requires:

- 10 (a) For documents, the Designating Party shall affix “CONFIDENTIAL” to
11 each page of the document that contains protected material. If only a
12 portion or portions of the material on a page qualifies for protection, the
13 Designating Party also must clearly identify the protected portions(s) by
14 making an appropriate marking in the margins.
- 15 (b) For testimony given at deposition, the Designating Party identify on the
16 record, before the close of the deposition, all protected testimony.
- 17 (c) For testimony given in other pretrial or trial proceedings, the Designating
18 Party identify on the record, before the close of the hearing or other
19 proceeding, all protected testimony.
- 20 (d) For information produced in some other form other than documentary and
21 for any other tangible items, the Designating Party affix
22 “CONFIDENTIAL” in a prominent place on the exterior of the container
23 or containers in which the information or item is stored.

24 4. If it comes to a Designating Party’s attention that information or items that it
25 designated for protection do not qualify for protection, the Designating Party must promptly
26 notify all other parties that it is withdrawing the mistaken designation.

27 5. If timely corrected, an inadvertent failure to designate qualified information or
28 items does not, standing alone, waive the Designating Party’s right to secure protection under

1 this Protective Order for such material. Upon timely correction of a designation, the Receiving
2 Party must make reasonable efforts to assure that the material is treated in accordance with the
3 provisions of this Protective Order.

4 D. Disputing Confidentiality Designations

5 1. If any party objects to any “Confidential” designation, that party may, after making
6 a good-faith effort to resolve such objection with the Designating Party, move on reasonable
7 notice for an order vacating the designation. While such application is pending, the information
8 shall continue to be treated as Confidential pursuant to this Protective Order. This paragraph is
9 not intended to shift the burden of establishing confidentiality, which remains at all times on the
10 Designating Party.

11 2. By agreeing to this Stipulated Confidentiality and Protective Order, it shall in no
12 way be viewed as a concession by any party that any document marked “CONFIDENTIAL” is
13 confidential, nor shall this stipulation be deemed a waiver of any party’s right to challenge the
14 propriety of a “Confidential” designation.

15 3. The parties shall not be obligated to challenge the propriety of a “Confidential”
16 designation within any set period after receiving the designated information.

17 E. Demands by Others for Confidential Information

18 1. If any other person, organization, or governmental entity demands by subpoena or
19 other appropriate authority the production of any Confidential Information produced to it by
20 another party, the party receiving such demand shall immediately notify the Designating Party
21 of such demand. At its option, the Designating Party may elect to challenge the demand and
22 assert any applicable protections, and shall notify the person, organization, or governmental
23 entity of its challenge within such time as required by law or required by compliance with the
24 demand. When such a challenge is made, the party who received the demand shall not produce
25 any Confidential Information in the absence of consent by the Designating Party or an order by
26 the issuing court compelling production.

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1 F. End of Litigation

2 1. Absent written permission from the Designating Party or on further order of this
3 Court, this Protective Order shall continue to be binding throughout and after the conclusion of
4 this litigation, including any settlements, appeals, and subsequent proceedings.

5 2. After this case is closed in the district court, the parties may seek the return of any
6 documents they filed under seal.

7 3. Within ninety (90) days after final adjudication of this case, including appeals or
8 resolution through settlement, unless otherwise agreed to in writing by an attorney of record for
9 the Designating Party, each party shall either: (a) assemble and return all Confidential
10 Information, including all copies thereof, to the party that produced it; or (b) certify in writing
11 that all such information has been destroyed, provided, however, that any other party may seek
12 to retain on a confidential basis any files or documents containing such material: (i) as long as
13 necessary as may be required by statute, regulation, or rule; (ii) as long as necessary in order to
14 satisfy obligations to insurers and to make insurance recoveries. A party who seeks to retain
15 documents pursuant to subparagraph (b) hereunder shall promptly so advise the party requesting
16 return or destruction of such documents of its intention. Any disputes concerning the
17 applicability of this paragraph shall be resolved by this Court.

18 G. Miscellaneous

19 1. Agreeing to, producing, or receiving Confidential Information or otherwise
20 complying with this Protective Order shall not:

21 (a) Prejudice the parties' rights to object to the production of documents they
22 consider not subject to discovery;

23 (b) Prejudice the parties' rights to object to the authenticity, relevance, or
24 admissibility into evidence of any document, testimony, or other
25 evidence;

26 (c) Prevent the parties from agreeing to alter or waive any portion of this
27 Protective Order with respect to any particular piece of Confidential
28 Information; or

1 (d) Prevent any party from seeking from this Court a modification of this
2 Protective Order, including, but not limited to, additional protection with
3 respect to the confidentiality of any information.
4

5 2. In the event additional parties join or are joined in this litigation, they shall not
6 have access to Confidential Information until the newly-joined party, by its counsel, has
7 executed and, at the request of any party, filed with the Court, its agreement to be fully bound by
8 this Protective Order.

9 3. The parties agree to be fully bound by this Protective Order pending its entry by
10 this Court, and any violation of this Protective Order shall be subject to the same sanctions and
11 penalties as if the Protective Order has been entered.

12 4. The production of material protected by the attorney-client privilege, the attorney
13 work product doctrine, or other privilege or protection ("Protected Material") does not waive,
14 estop, or prevent the producing party from asserting any privilege or other ground for
15 withholding such Protected Material in the course of discovery in this case. The parties may
16 make documents available for preliminary review or otherwise produce documents in this case
17 with or without any pre-production, post-production, or other review for Protected Material, and
18 neither conducting nor foregoing such review shall form a basis to prevent a party from
19 asserting any privilege or other ground for withholding Protected Material as provided for in this
20 Order.

21 5. A producing party shall have ninety (90) days after one of its counsel in this case
22 becomes actually aware that a specific document containing arguably Protected Material has
23 been produced in which to request its return; otherwise, any claim of protection for the Protected
24 Material shall be deemed presumptively waived. All such requests to return Protected Material
25 shall be in writing to lead counsel for all parties and shall identify the produced Protected
26 Material by Bates range(s). A producing party's counsel shall be deemed to be actually aware
27 that Protected Material was produced at the time the producing party's counsel is served with an
28 exhibit list for trial that specifically lists the Protected Material. If a producing party timely

1 requests the return of Protected Material, any party to which such material was produced shall,
2 within seven (7) days after the request, delete the produced Protected Material and all data
3 associated with such Protected Material (including images and metadata such as extracted text)
4 from any database or document management system containing the Protected Material and
5 associated data, return to the producing party any disk or other media containing Protected
6 Material, return to the producing party or destroy all paper copies of Protected Material, request
7 in writing that any third-party to whom the Protected Material was provided do the same, and
8 provide a written certification to the producing party that the receiving party has followed such
9 procedures. The receiving party has the responsibility to take reasonable steps to ensure that
10 any third party to whom it provided documents produced in this litigation which a producing
11 party later claims are Protected Material are destroyed or returned as outlined in this paragraph.
12 If the receiving party wishes to challenge the producing party's claim of protection as to the
13 Protected Material, the receiving party may file a motion with this Court to compel production
14 of such Protected Material.

15 6. The parties agree, and this Court hereby orders, that production of Protected
16 Material cannot provide a basis for any third party to seek disclosure or production of the
17 material viewed based on waiver, abandonment, estoppel, prior disclosure, or any other theory,
18 claim, or argument. The production of Protected Material shall not waive any claim of privilege
19 or protection in any other federal or State proceeding.

20 7. This Protective Order may be executed in counterparts.

21 8. In the event any provision of this Protective Order shall be held to be illegal,
22 unenforceable, or inoperative as a matter of law, the remaining provisions shall remain in full
23 force and effect unless such construction shall substantially frustrate the purpose and intent of
24 this Protective Order.

25 9. In the event of breach of this Protective Order, the parties expressly acknowledge
26 that the non-breaching party shall be entitled to specific performance of the terms of this
27 Protective Order or other injunctive relief. The parties expressly stipulate, agree, and
28 acknowledge that an unauthorized release of the Confidential Information, is a breach of this

1 Protective Order, and that damages arising from such a breach are not adequately relieved
2 through pecuniary compensation, are not reasonably quantifiable, and are immediately
3 irreparable.

4 IT IS SO STIPULATED.

5 Dated this 24th day of April, 2019.

Dated this 24th day of April, 2019.

6 ALVERSON TAYLOR & SANDERS

ARMSTRONG TEASDALE LLP

7 By: /s/Kurt R. Bonds

By: /s/Michelle D. Alarie

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15 *Attorneys for Defendant/Third-Party Plaintiff*
16 *Brasscraft Manufacturing Company*

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23 **ORDER**

24 **IT IS SO ORDERED.**

25 
26 UNITED STATES MAGISTRATE JUDGE

27 DATE: May 1, 2019
28

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2 **EXHIBIT A**
3 **(Stipulated Confidentiality and Protective Order)**

4
5 **UNITED STATES DISTRICT COURT**
6 **DISTRICT OF NEVADA**

7 AMICA MUTUAL INSURANCE
8 COMPANY, a/s/o Sarkis Tabakian and
Kohar Tabakian,

9 Plaintiff,

10 vs.

11 BRASSCRAFT MANUFACTURING
12 COMPANY and Does I through X, inclusive,

12 Defendants.

13 AND RELATED CLAIMS.
14

Case No.: 2:18-cv-01386-JCM-CWH

15 **ACKNOWLEDGEMENT OF PROTECTIVE ORDER**

16 This undersigned represents that he/she, along with his or her support personnel, as
17 applicable: (a) has received a copy of the Stipulated Confidentiality and Protective Order
18 ("Protective Order") in the above-captioned case; (b) has read the Protective Order and
19 understands its provisions; (c) agrees to be bound by the terms of the Protective Order; and (d)
20 agrees to be subject to the jurisdiction of the United States District Court for the District of
21 Nevada for the purposes of any proceedings related to the enforcement of the Protective Order.

22
23 Date:

24 _____
Signature
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28